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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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| In re | : | |
| | : | Chapter 11 |
| DELPHI CORPORATION, et al., | : | (Jointly Administered) |
| | : | |
| Debtors. | : | Case No. 05-44481 (RDD) |
| | : | |

DEBTORS' OBJECTION TO LEAD PLAINTIFFS' MOTION FOR LIMITED MODIFICATION OF AUTOMATIC STAY

Delphi Corporation ("Delphi") and certain of its subsidiaries and affiliates, debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), hereby respectfully submit this objection to Lead Plaintiffs' Motion for a Limited Modification to the Automatic Stay, dated November 15, 2005 (the "Motion"). In support of this Objection, the Debtors respectfully represent as follows:

Preliminary Statement

1. The Teachers' Retirement System of Oklahoma, Public Employees' Retirement System of Mississippi, Raiffeisen Kapitalanlage-Gesellschaft m.b.H and Stichting Pensioenfonds ABP, are lead plaintiffs of a putative class (the "Lead Plaintiffs") in the securities class action entitled In re Delphi Corp. Securities Litigation, Master File No. 1:05-CV-2637 (NRB)(S.D.N.Y.) (the "Securities Litigation").[1]

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[1] Lead Plaintiffs filed their Consolidated Amended Complaint in the Securities Litigation on September 30, 2005. It names as defendants, among others, Delphi, John D. Sheehan, Delphi's Chief Restructuring Officer, and seven of Delphi's current directors: Messrs. Brust, Bernardes, Opie, Colbert, Farr, Gottschalk, and Irimajiri. On November 18, 2005, Judge Buchwald, who was then presiding over the Securities Litigation, entered a revised scheduling order calling for the filing of motions to dismiss on or before January 11, 2006. See Order, In re Delphi Corp. Sec. Lit., Master File No. 1:05-CV-2637 (NRB) (S.D.N.Y. Nov. 18, 2005) (attached hereto under Tab-A). On December 12, 2005, the Judicial Panel on Multidistrict Litigation ordered that all of the securities cases against Delphi, including the Securities Litigation theretofore pending before Judge Buchwald, be transferred to the docket of Hon. Gerald E. Rosen of the United States District Court for the Eastern District of Michigan for consolidated or coordinated pretrial proceedings. See Order, In re Delphi Corp. Securities, Derivative & ERISA Litigation, M.D.L. No. 1725 (J.P.M.L. Dec. 12, 2005)

(continued...)

2. On November 30, 2005, Lead Plaintiffs filed the Motion seeking to modify the automatic stay to allow them to obtain (i) copies of all the documents gathered in connection with the internal investigation conducted by the Audit Committee of the Delphi Board of Directors, and (ii) copies of all documents Delphi produced to the government in conjunction with the SEC or FBI's investigations.

3. The Motion should be denied because Lead Plaintiffs have failed to show sufficient "cause" to modify the automatic stay at this time. The only "cause" for modifying the stay that Lead Plaintiffs have advanced is their claimed need to obtain discovery of the Debtors for purposes of prosecuting the Securities Litigation. That "cause," however, is not one that the law considers valid— at least not now. The Private Securities Litigation Reform Act of 1995 (PSLRA) provides that, in securities class actions, "all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party." 15 U.S.C. § 78u-4(b)(3)(B). Lead Plaintiffs' Consolidated Amended Complaint in the Securities Litigation is subject to

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[1] (...continued)
(attached hereto under Tab-B). The court advised the parties that Judge Rosen would issue a notice of a status conference in January 2006, and that counsel should consider the scheduling order issued by Judge Buchwald as suspended. The Debtors will file their motion to dismiss in accordance with the new schedule that will be set by Judge Rosen at the status conference.

upcoming motions to dismiss.[2] Congress has legislatively determined that securities class-action plaintiffs may not obtain discovery pending a motion to dismiss except in narrow circumstances and upon specific findings by the District Court hearing their case. Accordingly, unless and until they obtain permission to proceed with discovery from the District Court, Lead Plaintiffs have no legitimate cause to seek modification of the automatic stay here.

4. This Court should deny Lead Plaintiffs' motion without prejudice and require them first to take up the question of discovery of the Debtors with the District Court supervising the Securities Litigation. If the District Court finds—after notice to and an opportunity to be heard by all the parties to the Securities Litigation—that "particularized discovery" of the Debtors "is necessary to preserve evidence or to prevent undue prejudice" to Lead Plaintiffs, as required by the PSLRA, then Lead Plaintiffs may return here. If the Debtors do not agree to participate in that discovery, in light of the facts and circumstances existing at that time, then Lead Plaintiffs may renew their present application to this Court. They

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[2] The PSLRA Stay comes into effect whenever a defendant indicates that a motion to dismiss will be filed—as is the case in the Securities Litigation. See Faulkner v. Verizon Communications, Inc., 156 F. Supp. 2d 384, 402 (S.D.N.Y. 2001) (staying discovery pursuant to PSLRA based upon defendant's representation of intent to file motion to dismiss); Global Intellicom, Inc. v. Thomson Kernaghan & Co., No. 99 Civ 342, 1999 WL 223158 at *1 (S.D.N.Y. April 16, 1999) (noting discovery had been stayed because defendant had indicated that it would be filing motion to dismiss); In re Trump Hotel Shareholder Derivative Litig., No. 96 Civ. 7820, 1997 WL 442135, at *1-2 (S.D.N.Y. Aug. 5, 1997) (holding that stay under PSLRA applied when defendant had represented its intent to file motion to dismiss and delayed filing was on account of schedule that parties agreed to).

may then be able to demonstrate "cause " to modify the stay. It is only then that Debtors should be called upon to meet their burden of proving that the stay should remain unmodified. This approach gives effect to the policies underlying the PSLRA, accords the defendants in the Securities Litigation meaningful notice and an opportunity to be heard regarding Lead Plaintiff's efforts to lift the PSLRA stay, and leaves the ultimate decision concerning a matter that bears upon the administration of the Debtors' estates where it belongs–with this Court.

Argument

5. The automatic stay imposed by section 362 of the Bankruptcy Code is one of the most fundamental and significant protections that the Bankruptcy Code affords a debtor. See Midlantic Nat'l Bank v. N.J. Dep't of Envtl. Prot., 474 U.S. 494, 503 (1986); see also In re Drexel Burnham Lambert Group Inc., 113 B.R. 830, 837 (Bankr. S.D.N.Y. 1990) ("Automatic stay is key to the collective and preservative nature of a bankruptcy proceeding."). The automatic stay is designed, among other things, to give the debtor a breathing spell after the commencement of a chapter 11 case, to shield debtors from creditor harassment, and to provide them a refuge from hectoring litigants when their personnel should be focusing on restructuring. See Taylor v. Slick, 178 F.3d 698, 702 (3d Cir. 1999).

6. The automatic stay broadly extends to all matters that may have an effect on a debtor's estate, enabling bankruptcy courts to ensure that debtors have the opportunity to rehabilitate and reorganize their business. See Manville Corp. v. Equity Sec. Holders Comm. (In re Johns-Manville Corp.), 801 F.2d 60, 62-64 (2d Cir. 1986); see also Fid. Mortgage Investors v. Camelia Builders, Inc., 550 F.2d 47, 53 (2d Cir. 1976) ("Such jurisdiction is necessary to exclude any interference by the acts of others or by proceedings in other courts where such activities or proceedings tend to hinder the process of reorganization.'") (citation omitted); AP Indus., Inc. v. SN Phelps & Co. (In re AP Indus., Inc.), 117 B.R. 789, 798 (Bankr. S.D.N.Y. 1990) ("The automatic stay prevents creditors from reaching the assets of the debtor's estate piecemeal and preserves the debtor's estate so that all creditors and their claims can be assembled in the bankruptcy court for a single organized proceeding.").

7. In Sonnax Indus. v. Tri Component Prods. Corp. (In re Sonnax Indus.), 907 F.2d 1280, 1285 (2d Cir. 1990), the Court of Appeals explained the burden-shifting regime that applies to a motion to modify the automatic stay:

> The burden of proof on a motion to lift or modify the automatic stay is a shifting one. Section 362(d)(1) requires an initial showing of cause by the movant, while Section 362(g) places the burden of proof on the debtor for all issues other than "the debtor's equity in property," 11 U.S.C. § 362(g)(1). See 2 Collier on Bankruptcy para. 362.10, at 362-76. If the movant fails to make an initial showing of cause, however, the court should deny relief without requiring any showing from the debtor that it is entitled to continued protection.

8. Because Lead Plaintiffs have failed to make the required threshold showing of a valid "cause" to modify the automatic stay, their motion should be denied, without requiring any further showing by the Debtors. Even had Lead Plaintiffs shown a valid cause, however, the pertinent considerations weigh in favor of preserving the Debtors' continued protection of the automatic stay.

A. Lead Plaintiffs Have Not Shown Valid Cause To Modify The Automatic Stay.

9. In a tacit concession that they actually have no valid cause, Lead Plaintiffs' Motion fails expressly to identify the cause they contend warrants modification of the automatic stay. There is no doubt, however, about the purpose behind their Motion: they want to obtain documents from the Debtors to use to prosecute the Securities Litigation. What Lead Plaintiffs have not said—but which is implicit in their Motion and incontrovertible—is that they want the Debtors' documents *now* to enable them to resist the motions to dismiss they know are coming in the Securities Litigation.

10. Lead Plaintiffs' true purpose can also be seen in other steps they have taken during this litigation, including, but not limited to, their efforts to obtain document and deposition discovery purportedly in support of their objections to the Debtors' application to retain Deloitte & Touche LLP and to the Debtors' KECP Motion. Lead Plaintiffs have frankly acknowledged that such discovery is intended

to help them "get smart"—as they have said—on their case in the Securities Litigation. Lead Plaintiffs' Motion and the other objections filed are clearly a coordinated attempt to circumvent the mandates of the automatic stay and the PSLRA stay and specifically tailored to further their interests in the Securities Litigation. Moreover, "getting smart" about claims about which they should have had sufficient basis before they filed them—all in the course of evading the operations of an Act of Congress designed to crack down on abusive securities class actions—should not be a "cause" that bankruptcy courts recognize as sufficient for purposes of lifting the automatic stay imposed by section 362.

11. Providing securities plaintiffs with evidence to use in resisting motions to dismiss their class action complaint is not, however, a valid cause to modify the automatic stay. In fact, Congress has declared that purpose invalid by enacting 15 U.S.C. § 78u-4(b)(3)(B), the stay provision of the PSLRA. Congress passed this law in response to testimony about two related abuses in securities class action lawsuits. First, Congress heard testimony that "[t]he cost of discovery often forces innocent parties to settle frivolous securities class actions." H.R. Conf. Rep. No. 104-369, at 37 (1995), reprinted in 1995 U.S.C.C.A.N. 730, 736. Second, Congress learned that "plaintiffs sometimes file frivolous lawsuits in order to conduct discovery in hopes of finding a sustainable claim not alleged in the complaint." S.

Rep. No. 104-98, at 14 (1995), reprinted in 1995 U.S.C.C.A.N. 679, 693. The stay provision in the PSLRA deters these so-called "strike suits" and "fishing expeditions" by mandating that, aside from certain exceptional circumstances, "discovery . . . be permitted . . . only after the court has sustained the sufficiency of the complaint." Id.

12. Without more, a plaintiff's inability to muster facts sufficient to survive motions to dismiss is not grounds for lifting the stay on discovery imposed by the PSLRA. See SG Cowen Sec. Corp. v. United States Dist. Court for the N. Dist. of Cal., 189 F.3d 909, 912-13 (9th Cir. 1999) ("[T]he district court granted plaintiffs leave to conduct discovery so that they might uncover facts sufficient to satisfy the Act's pleading requirements. This is not a permissible reason for lifting the discovery stay under the Act."). See Medhekar v. United States Dist. Court for the N. Dist. of Cali., 99 F.3d 325, 328 (9th Cir. 1996) ("Congress clearly intended that complaints in these securities actions should stand or fall based on the actual knowledge of the plaintiffs rather than information produced by the defendants after the action has been filed."); In re AOL Time Warner, Inc. Sec. & "ERISA" Litig., MDL No. 1500, 02 Civ. 5575, at *6 (S.D.N.Y. July 21, 2003) (in denying motion to lift PSLRA discovery stay, court notes: "Nor can it be assured that plaintiffs will not attempt to use the discovery materials in opposition to the recently filed motion [to

dismiss].") This Court should not, therefore, recognize as "good cause" for modifying the automatic stay in bankruptcy cases the very same cause that Congress had for imposing a stay of discovery in securities class-action cases in the first place.

B. Lead Plaintiffs Should First Obtain Relief From The District Court.

13. In enacting the stay provision of the PSLRA, Congress also stipulated the procedure, and standard, that should apply whenever securities class action plaintiffs seek to obtain discovery pending motions to dismiss. First, they must file a "motion" in the District Court, which means that all the parties to the securities class action receive notice and an opportunity to be heard (in contrast to Lead Plaintiffs' approach here, under which the other defendants in the Securities Litigation received neither). Second, plaintiffs' motion must identify the "particularized" discovery that they seek, which means that they cannot simply make a general request of a party to produce "all documents" relevant to their claims (as Lead Plaintiffs have done here). Third, they must prove, to the District Court's satisfaction, that the "particularized" discovery is "necessary to preserve evidence or to prevent undue prejudice" to them (showings that Lead Plaintiffs do not even pretend to meet here).

14. Lead Plaintiffs should be required to follow that same procedure in this case. Before they are heard here, they should first have satisfied the District

Court that the stay of discovery imposed by the PSLRA should be lifted. To do otherwise would subvert the purpose of the PSLRA and enlist this Court in rendering a premature opinion based upon a hypothetical condition that may never come to pass.

15. Relieving Lead Plaintiffs of their obligation to proceed first in the District Court would also frustrate the purposes of the Bankruptcy Code, for it would effectively result in surrender of this Court's ultimate authority to make decisions concerning the administration of the Debtors' estates. Thus, Lead Plaintiffs say that, once this Court modifies the automatic stay, "[t]he ultimate decision as to whether the Debtor would be required to produce the requested documents would lie with Judge Buchwald [now, Judge Rosen], who is presiding over the Securities Litigation in the District Court." (Motion ¶ 15.) Lead Plaintiffs have things backwards. The predicate decision of whether Lead Plaintiffs for the putative class should be entitled to ask for discovery of the Debtors lies with the District Court. Under title 11, the "ultimate decision" with regard to whether they should get that discovery—given the facts and circumstances then existing—resides in this Court.

16. In fact, there should be no doubt but that, were this Court to accede to Lead Plaintiffs' request, this Court's order modifying the automatic stay to allow Lead Plaintiffs' proposed discovery to proceed will be used effectively to

render the stay of discovery under the PSLRA a dead letter in this case. Should this Court grant Lead Plaintiffs' requests here, plaintiffs in the ERISA and derivative actions against Delphi and its fellow defendants in the Securities Litigation–actions in which the PSLRA stay may not apply–will request similar relief from this Court.[3] No principled basis for denying them such relief—while granting it to Lead Plaintiffs—is apparent. Lead Plaintiffs will then proceed to the District Court and argue that this Court's orders bring them within the exception to the stay under the PSLRA.

17. Moreover, if this Court grants Lead Plaintiffs their request, one can easily envision them saying, "Judge Drain has already ruled that there is no cognizable burden on the Debtors in producing all the documents we have requested, so no further particularization of our discovery requests need be made. And since Judge Drain allowed the ERISA and derivative plaintiffs to get the same documents we want from the Debtors, we will be 'prejudiced' in the prosecution of our cases, relative to those other plaintiffs, if we don't get them too." Under this approach,

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[3] The Debtors reserve their right to argue that the PSLRA stay applies to discovery requests made in ERISA litigation. See In re AOL Time Warner, Inc. Sec. and "ERISA" Litig., 2003 WL22227945, at *2 (S.D.N.Y. Sept. 26, 2003) (held in coordinated securities and ERISA litigation, it is appropriate to stay discovery on plaintiffs' ERISA claims, given that providing discovery to counsel for ERISA plaintiffs, who subsequently could share fruits of their discovery with securities plaintiffs, "would render the PSLRA's stay provision a nullity").

Lead Plaintiffs will have effectively bootstrapped themselves out of both the automatic stay and the stay imposed by the PSLRA.[4]

C. In All Events, The Sonnax Factors Weigh Against Modifying The Stay.

18. Even assuming that Lead Plaintiffs had advanced a valid cause to modify the automatic stay, the relevant considerations still weigh in favor of keeping the stay intact to preclude the discovery of the Debtors in the Securities Litigation—at least for the time being.

19. In Sonnax Industries, the Second Circuit sets forth twelve factors the Court should consider in determining whether to keep the automatic stay intact and in place:

> (1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether

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[4] Lead Plaintiffs lay heavy emphasis on Judge Gonzalez's decisions in the Enron and WorldCom cases. Those cases are readily distinguishable on their facts—including the fact that guilty pleas by former executives made the securities defendants' motions to dismiss an outside shot at best. The debtors in Enron and WorldCom also do not appear to have made the same arguments that the Debtors have advanced here. In any event, Enron and WorldCom are not binding. See EEOC v. Pan American World Airways, 576 F. Supp. 1530, 1535 (S.D.N.Y. 1984) (district court decisions are not binding even on other district courts in same district); Daly v. Deptula (In re Carrozzella & Richardson), 255 B.R. 267, 271-272 (Bankr. D. Conn. 2000) (held, decisions of Second Circuit Bankruptcy Appellate Panel (BAP), while highly persuasive, are not binding precedent for bankruptcy courts in Second Circuit and judge of bankruptcy court—a unit of the district court—is not bound by decision of single district court judge).

> litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms.

In re Sonnax Indus., 907 F.2d at 1286. All twelve factors will not be relevant in every case, Mazzeo v. Lenhart (In re Mazzeo), 167 F.3d 139, 143 (2d Cir. 1999), nor must the Court afford equal weight to each of the twelve factors. See Burger Boys, Inc. v. S. St. Seaport Ltd. P'ship (In re Burger Boys, Inc.), 183 B.R. 682, 688 (S.D.N.Y. 1994). Several of the twelve factors are relevant in this case and, as described below, all weigh heavily in favor of denying the Motion.

20. Chief among the relevant considerations are "the interests of judicial economy and the expeditious and economical resolution of litigation." This Court simply should not engage in making decisions about modification of the automatic stay unless and until the antecedent question of Lead Plaintiffs' entitlement to obtain discovery from the Debtors is decided by the District Court. If the District Court denies Lead Plaintiffs' request, then this Court will not have to resolve anything. If Lead Plaintiffs' Consolidated Amended Complaint fails to withstand motions to dismiss, this Court will not have to modify the stay. In those circumstances, not only will the Court's and the litigants' resources be conserved, but the

Debtors will not be put to the immense burden of producing a massive amount of documents.[5]

21. Modification of the stay as requested by Lead Plaintiffs will not result in even a partial resolution of the Securities Litigation. If anything, it may protract the litigation as Lead Plaintiffs attempt to use the Debtors' documents to fashion a complaint that otherwise should be dismissed. In all events, even if this Court modifies the automatic stay now, Lead Plaintiffs will still have to seek permission from Judge Rosen to lift the PSLRA Stay.

22. Forcing the Debtors, their management, and their counsel to focus now on the nascent Securities Litigation at this stage of these chapter 11 cases will also interfere with the Debtors' attention to more immediate matters, including their negotiations with their unions and the development and implementation of a plan to realign Delphi's global product portfolio and manufacturing footprint to preserve the Debtors' core businesses. The Debtors need to focus on these immediate

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[5] Lead Plaintiffs are incorrect that their discovery demands will impose only a trivial burden on the Debtors. All the documents within the categories that they seek will need to be reviewed again not only for privilege, but also to determine whether they contain confidential business information that should be subject to limiting protective orders. Moreover, providing copies of all the documents gathered in connection with the internal investigation conducted by the Audit Committee of the Delphi Board of Directors would be a massive undertaking that would be incredibly burdensome, involving the review of hundreds of thousands of pages, many of which may not be at all relevant. Nevertheless, to the extent this Court determines that an analysis of burden is critical to its adjudication of this matter, the Debtors reserve their right to supplement this objection and to provide evidence in support of the Debtors' burden of producing the requested documents.

significant tasks and develop a comprehensive restructuring plan for their business and the several hundred thousand creditors and parties-in-interest in these cases. The Debtors have a lot of work to do and, absent extraordinary circumstances which have not been shown, they should not be required to spend the time and money entailed in dealing with Lead Plaintiffs' discovery demands. See In re Pioneer Commercial Funding Corp., 114 B.R. 45, 48 (Bankr. S.D.N.Y. 1990). It is, in a word, premature for the Court to consider modification of the stay with respect to the Securities Litigation at this time.

23. The Debtors are parties to a multitude of proceedings in numerous federal and state courts throughout the country. If the stay is lifted for Lead Plaintiffs at this early stage of these chapter 11 cases, the inevitable result will be numerous motions by other parties seeking to obtain relief from the automatic stay, further diverting the Debtors' resources from their reorganization efforts. See, e.g., LTV Steel Co. v. Bd. Of Education (In re Chateaugay Corp.), 93 B.R. 26, 30 (S.D.N.Y. 1988) (noting that the automatic stay is intended to prevent a "chaotic and uncontrolled scramble for the debtor's assets in a variety of uncoordinated proceedings in different courts"). Moreover, if Lead Plaintiffs survive motions to dismiss the Securities Litigation, they will doubtless be back before this Court seeking further relief from the stay to obtain additional discovery.

24. The parties in the Securities Litigation are nowhere close to being ready for trial. The Securities Litigation was filed approximately nine months ago. Lead Plaintiffs must first survive motions to dismiss before the Securities Litigation can continue. All of the securities cases against Delphi, including the Securities Litigation, were recently transferred to Judge Rosen to be coordinated or consolidated as the court deems appropriate. The putative class has not been certified – in fact, Lead Plaintiffs have not yet filed a motion for class certification. It is obvious that the Securities Litigation is in its infancy and there will be no prejudice in continuing the automatic stay in effect until Judge Rosen has ruled on all motions to dismiss. See Provincetown Boston Airline, Inc. v. Miller, 52 B.R. 620, 624 (Bankr. M.D. Fla. 1985) (denying request to lift automatic stay early in bankruptcy case when discovery had not started in class action at issue).

25. The balance of the harms weighs squarely in favor of continuing the automatic stay intact. The Motion was filed only 38 days after, and will be heard by this Court less than 90 days after, the commencement of these cases. The Debtors are currently in the critical process of stabilizing their business and addressing the myriad of issues that normally occur at the beginning of a chapter 11 case. The relief requested herein is premature and will serve only to distract the Debtors from the reorganization process. The Securities Litigation, on the other hand, is currently

stayed, where discovery will remain stayed until the District Court rules otherwise or the final motions to dismiss are denied. Maintenance of the automatic stay will in no way prejudice Lead Plaintiffs by denying them discovery to which they would not otherwise be entitled.

Notice

26. Notice of this Objection has been provided in accordance with the Order Under 11 U.S.C. §§ 102(1) And 105 And Fed. R. Bankr. P. 2002(m), 9006, 9007, and 9014 Establishing (I) Omnibus Hearing Dates, (II) Certain Notice, Case Management, And Administrative Procedures, and (III) Scheduling An Initial Case Conference In Accordance With Local Bankr. R. 1007-2(e), entered by this Court on October 14, 2005 (Docket No. 245). In light of the nature of the relief requested, the Debtors submit that no other or further notice is necessary.

Memorandum Of Law

27. Because the legal points and authorities upon which this Objection relies are incorporated herein, the Debtors respectfully request that the requirement of the service and filing of a separate memorandum of law under Local Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York be deemed satisfied.

## Conclusion

WHEREFORE the Debtors respectfully request that the Court enter an order (i) denying the Motion and (ii) granting such other relief as is just.

Dated: New York, New York
December 29, 2005

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